IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 16 of 2005

DR.JASVINDER SINGH
V/S
RUKMANI DEVI

Mr. RK THANVI, for the appellant / petitioner

Date of Order : 20.1.2005

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the appellant at length.

The learned Lower Appellate Court has reversed the finding of the learned trial Court, on the question of reasonable and bonafide necessity, comparative hardship, and partial eviction, and has decreed the suit for eviction.

The plaintiff came with a case, about the premises, being required by the plaintiff for herself carrying on the business of Manihari. It was pleaded that her husband has expired, and she is facing financial crisis, therefore, she wants to carry on the business.

It is contended by the learned counsel for the appellant, that the learned Court below has proceeded on wrong consideration, inasmuch as, the learned Lower Appellate Court has taken into account the fact, that there are two shops, situated opposite bus stand, which belong to the appellant, while firstly, it is not established, that the said two shops are there, and secondly, even if those two shops were there, since the suit was not filed on the ground of availability of alternative accommodation with the appellant, the finding is vitiated. Regarding factual aspect of availability of shops, it was contended, that in the advertisement, Ex.3, it is not mentioned that the shops belong to the appellant, and the appellant had clearly deposed, that those shops belonged to the appellant's mother. Notwithstanding that, the learned Lower Appellate Court has proceeded on the basis that the defendant had admitted in the advertisement, that the shops belong to him. This vitiates the finding.

The other submission made is, that an application was filed under Order 11 Rule 14 CPC by the plaintiff for summoning

the documents of title of those shops. That application was dismissed by the learned trial Court vide order dated 12.3.1997, and that order was not challenged by the plaintiff, whether by filing a revision, or even by taking a ground in the memo of appeal, exercising her rights under Section 104 CPC. Notwithstanding that, the learned Lower Appellate Court has interfered with that order, and has concluded that if the documents would have been summoned, things would have been better, but since the matter is at appellate stage, it is not thought proper to set aside that order, and the matter is required to be decided on the basis of some newspaper publication, being Ex.3.

The next submission made is, that the newspaper publication, Ex.3, itself is not an admissible evidence, in absence of the maker of that statement, so as to prove the correctness of the contents of the newspaper. Then, yet next submission made is, that in the plaint, the plaintiff has categorically pleaded, that she needs the shop to carry on business, because she is under financial crisis, as against which, in the entire evidence, there is not even a whisper about the plaintiff suffering any financial crisis, nor is there any evidence to show, that she is even under financial difficulties. In that view of the matter, the alleged requirement of the plaintiff, to carry on the business of Manihari in the shop, only rests in the realm of desire, and does not travel to the realm of need, much less reasonable, and bonafide necessity, and therefore, the finding of the learned Lower Appellate Court is bad.

The last submission made was that, in any case, a partial eviction of the premises could be ordered, inasmuch as, from out of the shop, the tenant could have been left with the rear portion, including gallery, and toilet, by giving some reasonable access from the main shop, so that he could continue to carry on his clinic.

I have considered the submissions.

True it is, that the learned Lower Appellate Court, at the opening of the discussions, has considered the factual aspect of availability of the shops with the defendant, which cannot be said to be the correct approach, inasmuch as, the learned Lower Appellate Court should have first pondered on the question of existence of reasonable, and bonafide necessity of the plaintiff, and thereafter, the availability of shop should be considered, only for the purpose of deciding comparative hardship. However the fact remains, that the learned Lower Appellate Court has

independently considered the question of reasonable and bonafide necessity of the plaintiff, inasmuch as, after considering the various judgments, cited on behalf of either side, at page 10, the learned Lower Appellate Court has propounded the basic proposition about the parameters, on which, the question of reasonable, and bonafide necessity is required to be decided, and has held, that the plaintiff is the best judge of his requirement, the tenant cannot dictate the landlord to select the particular premises, or to limit his requirements, that the requirement should not be mere wish, or desire, but should be reasonable, and bonafide necessity. Thereafter, the learned Lower Appellate Court has found at page 14, that the trial Court was in error in expecting the documentary evidence about partition, or separation of the mother from the son, as it was not necessary for the plaintiff to prove such partition. Then it was also noticed, that it is commonly seen, that the father, son, and mother may all independently earn. This is coupled with the fact, that the plaintiff has requisite financial resources in the form of FD. Then it has been noticed that the irrigated land, held by her husband, has already been sold by her husband himself. With this, it has been noticed that the defendant had another alternative accommodation available with him, and had advertised them for letting out, but then he is taking avoiding steps to get out of the difficulty. Then it has also been found that the plaintiff has requisite experience of the enterprise, which she wants to commence. Then after discussing the statement of the defendant, it has been found, that the defendant has not been able to properly establish that the requirement, pleaded by the plaintiff, is wrong, or obliquely motivated.

I have gone through the evidence on record once again with the assistance of the learned counsel for the appellant, and find that the plaintiff has been able to establish reasonable, and bonafide requirement. Simply because, it has not been deposed by her that she needs the shop only because she is under financial crisis, does not militate against the fact that she requires the premises for carrying on the business of Manihari. She has clearly proved to be possessing requisite experience, and admittedly she is having financial resources. According to the plaintiff’s evidence, her son is living separately though in the same building, but then, simply because the son is carrying on another business does not disentitle the plaintiff to start any business in the shop. It is not in dispute that the plaintiff’s husband was advocate, who has unfortunately died in the year

1990. Obviously the death is required to be taken into account to have reduced the financial resources of the recurring income being earned by the advocate husband. Therefore, even if the lady is not under financial crisis, and wants to carry on the business for earning, and wants to lead a comfortable life, it cannot be said that the requirement is a mere wish, or desire, more particularly when the defendant has not been able to prove that the requirement was obliquely motivated. It is settled law that it is not always necessary to allow the tenant to earn his livelihood, and for that the land lord should continue to live under the same circumstances, and with the same standard, as he is presently living. Thus, I agree with the findings of the learned lower Appellate Court, on re-appreciation of evidence, that the plaintiff has been able to establish her bonafide, and reasonable requirement of the shop.

So far as the availability of other shops with the defendant is concerned, true it is that this had not been the ground of eviction, and obviously could not be, as availability of alternative accommodation with the tenant is not a ground of eviction from commercial premises. But then, for the purpose of considering comparative hardship, that factor is required to be taken into account.

So far as admissibility of the advertisement Ex. 3 is concerned, the learned counsel relied upon the judgments to the effect that in absence of evidence of maker thereof, that cannot be admitted in evidence. In the present case, it is not in dispute that the maker of Ex.3 is the appellant himself, who has deposed that the advertisement was given by him on behalf of his mother, to whom the shops belong, and in this sequence has taken the stand, that advertisement can be given by any-one. Of course, the subsequent stand has been taken to the effect that those shops had been demolished, but then the appellant has not brought any material on record to show that despite the shops being belonging to her mother, they are not available to him, whether on account of the relations between him and the mother being not cordial, or otherwise. No material has been shown to establish that the shops had been demolished, except the bald statement by word of mouth by the appellant. Had they been demolished, he could have very well procured, and produced, the relevant material from the authority concerned who had demolished the shop, or even could have produced notice calling upon the appellant or his mother to remove the shops being unauthorized,

or the like. In that view of the matter, the availability of those shops is required to be taken into consideration as a relevant consideration, tilting the balance of comparative hardship in favour of the land lord.

Then taking up the submission of interference with the order of the learned trial court dt. 12.3.1997, true it is that that order had not been assailed by the plaintiff, whether by filing revision, or by taking a ground in the memo of appeal, but then a look at the impugned judgment shows, that the learned lower Appellate Court has only observed, that if the documents would have been summoned the things would have been better, but then at the same time the learned lower Appellate Court has expressly declined to set aside that order, and has decided the matter by taking into account Ex. 3 only. Thus, this contention also need not detain me.

Then, taking up the last contention about partial eviction, firstly the defendant in his own statement has clearly deposed that the property cannot be divided, and secondly while dictating the judgment, when the learned counsel for the appellant was put a specific option as to whether he would rest contended with the offer given by him about being satisfied with the rear gallery and toilet, and by being given some reasonable access from the main shop, but then, realising the impracticability thereof, the learned counsel did not stand to the submission, and in my view, rightly so. That being the position the question of partial eviction also does not survive.

The appeal thus, has no force, and is hereby dismissed summarily. However, at the request of the learned counsel for the appellant, the appellant is given time upto 31st December 2005 to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decreetal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In

case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

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